

The Outside Counsels' Conflicts Committee appointed by the General Counsel of the FDIC, or designee, will resolve issues of conflict of interest relating to law firms.

(b) *Authority.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may delegate their authority to resolve conflicts of interest issues which arise under these regulations.

(c) *Referrals to the Board of the Corporation.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may make referrals of and recommendations to the Board of Directors of the Corporation with respect to situations in which a Committee determines that a very significant conflict of interest exists but, nevertheless, the contractor should be engaged because the contractor has special expertise not otherwise available or the engagement is otherwise in the best interests of the government.

(d) *Decisions.* Decisions issued either by the Contractors' Conflicts Committee itself, or the Board of Directors of the Corporation itself on matters referred to it by the Contractors' Conflict Committee shall be in writing and shall include statements of the bases for the decisions. Such decisions shall be filed with the Executive Secretary of the Resolution Trust Corporation and shall be made available to the public upon request, with such redactions as may be required to protect the privacy interests of identifiable individuals or confidential business information.

§ 1506.4 Qualification of contractors.

(a) *Requirements.* The RTC shall not enter into a contract with any contractor unless the contractor and its related entities meet minimum standards of competence, integrity, fitness, and experience. In addition to presenting evidence (on a form or forms to be furnished by the RTC for that purpose) of competence and experience, the contractor shall provide a list of any instance during the preceding five years in which there was a default by the contractor or any of its related entities on any material obligation to an insured depository institution, and shall

be required to certify to the following items:

(1) That neither the contractor nor any of its related entities has been convicted of a felony;

(2) That neither the contractor nor any of its related entities has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) That neither the contractor nor any of its related entities has demonstrated a pattern or practice of defalcation under § 1506.2(k)(1);

(4) That neither the contractor nor any of its related entities has caused a substantial loss to Federal deposit insurance funds;

(5) That neither the contractor nor any of its related entities, nor any entity that during the past five years was a related entity of the contractor or those who control the contractor, has failed to satisfy an obligation to pay principal or interest at its full value owed to any Federal deposit insurance funds, FSLIC, or the RTC;

(6) That neither the contractor nor any of its related entities are currently in default on any obligation(s) to the FDIC, the FSLIC, or the RTC;

(7) That neither the contractor nor any of its related entities:

(i) Is currently a party to an administrative or judicial proceeding in which any of them is alleged to have engaged in fraudulent activity or has been charged with the commission of a felony or which seeks a remedy that would prevent or materially interfere with its ability to perform on the contract; or

(ii) Is subject, to their knowledge, to an administrative or criminal investigation relating to fraudulent activity or the commission of a felony;

(8) That, during the past five years, neither the contractor nor any of its related entities has been held liable for fraud, dishonesty, misrepresentation, or breach of fiduciary duty;

(9) That neither the contractor nor any of its related entities is currently excluded from Federal procurement or nonprocurement programs;

(10) That neither the contractor nor any of its related entities is subject to

an unsatisfied final judgment in favor of the FDIC, the FSLIC, or the RTC;

(11) That neither the contractor nor any of its related entities is a party to a lawsuit in which the FDIC, the FSLIC, or the RTC is seeking recovery in excess of \$50,000 from the contractor or its related entities; and

(12) That the contractor will not employ any individual or subcontractor to perform work on the contract who:

- (i) Has been convicted of any felony;
- (ii) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;
- (iii) Has demonstrated a pattern or practice of defalcation;

(iv) Has caused a substantial loss to Federal deposit insurance funds; or

(v) Is currently in default on any obligation to the FDIC, the FSLIC, an insured depository institution or the RTC.

Depending upon the nature of the contract, a contractor may be required to submit such additional certifications or information with respect to its activities and those of its related entities as the RTC deems appropriate.

(b) *Procedures.* (1) A contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section shall provide information which fully explains the circumstances giving rise to its inability to furnish the certification(s). The Contractors' Conflicts Committee, or the Outside Counsels' Conflicts Committee, will determine whether a contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section is deemed to meet minimum standards of fitness and integrity.

(2) A contractor may consolidate the responses of its related entities in furnishing the certifications required by paragraphs (a)(1) through (a)(11) of this section or in providing the information required by paragraph (b)(1) of this section. If a consolidated response is submitted, the contractor shall retain the information obtained from its related entities upon which it relied in preparing the certifications during the term of the contract and for a period of three years following the termination

or expiration of the contract and shall make such information available for review by the RTC upon request.

(3) Before permitting any individual to perform work pursuant to the contract, the contractor shall obtain such information from such individual as will permit it to furnish the certification to comply with paragraph (a)(12) of this section. The contractor shall retain the information upon which it relied in preparing the certification during the term of the contract and for a period of three years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request. Whenever a contractor receives information indicating that the certification or any information upon which it relied in preparing the certification is incorrect in any material respect, the contractor shall promptly notify the RTC and shall not permit the individual to whom the information relates to perform work pursuant to the contract.

(4) Before permitting any subcontractor to perform work pursuant to the contract, the contractor shall determine that the subcontractor has been determined to be qualified to provide services to the RTC.

(c) *Delay.* The RTC, in case of an emergency, to preserve assets of the RTC, may delay implementation of the certification or other requirements of this section.

(Approved by the Office of Management and Budget under control number 3205-0001)

[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§ 1506.5 Disqualification of contractors.

(a) *Mandatory ineligibility.* A contractor shall be deemed not to meet minimum standards of fitness and integrity, and therefore ineligible to contract with the RTC, if the contractor:

(1) Is an individual and has been convicted of a felony;

(2) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;